TEXACO EXPLORATION AND PRODUCTION, INC.

IBLA 93-682 Decided December 1, 1995

Appeal from a decision of the Acting Deputy Commissioner, Bureau of Indian Affairs, denying an appeal of an order of the Minerals Management Service directing recalculation and payment of additional royalties due on Indian allottee oil and gas lease 601-019437-0. MMS-91-0020-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Indians: Mineral Resources: Oil and Gas: Royalties--Oil and Gas Leases: Royalties: Generally

   MMS properly required the lessee of a Federal Indian allottee oil and gas lease to review royalty accounts and to compute and pay additional royalties where an MMS audit demonstrated a systemic underpayment of royalties in 4 of 6 test months.

2. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Royalties: Generally--Statute of Limitations

   The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1988), for commencement by the United States of civil actions for damages, does not apply to limit administrative action by the Department. An MMS order requiring recalculation and payment of additional royalties on an Indian allottee oil and gas lease is an administrative action that is not covered by that statute of limitations.

APPEARANCES: Nanette Crawford, Esq., Denver, Colorado, for appellant; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Minerals Management Service.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Texaco Exploration and Production, Inc. (f/k/a Texaco Producing, Inc.) (Texaco), has appealed from a July 6, 1993, decision of the Acting Deputy Commissioner, Bureau of Indian Affairs, denying the appeal of a

September 20, 1990, order of the Houston Regional Compliance Office, Minerals Management Service (MMS), directing Texaco to recalculate and pay any additional royalties resulting from oil volume understatements for Indian allotted lease No. 601-019437-0 during the period October 1980 to issuance of the MMS order. 1/

In the September 20, 1990, order, MMS explained that an audit had disclosed that royalties on the lease for the period October 1980 through September 1983 were underpaid by at least $5,540.16 due to the understatement of sales volume and failure to compute royalties on the basis of gross proceeds. MMS stated that sales volumes were understated for 4 of the audit's 6 test months, and that the understatements were disclosed when quantities allocated to the lease (total unit sales volume times lease allocation percentage) were compared to the quantities reported to MMS for the test months, December 1980, June and December 1981, and February 1982.

MMS stated that Texaco had been informed of the results of the audit in a September 30, 1989, letter in which payment of $5,540.16 had been requested; that no payment had been made; and that no response had been received to that letter. Accordingly, MMS directed Texaco "to recalculate and pay any additional royalties resulting from volume understatement on Lease No. 601-019437-0 for the period October 1980 to present."

The file before the Board does not indicate the exact date when MMS initiated its audit. However, Texaco represented that it

> was conducted, after issuance by the MMS of an order dated September 30, 1988, pursuant to an agreement, dated December 28, 1988, between Texaco et al, and the Hon. James Cason, Deputy Assistant Secretary of the Department of the Interior. In that agreement, Texaco specifically reserved the right to challenge any demands that might be issued in the future that required payment of additional royalties alleged to have been due more than six (6) years prior to the date of the demand. [2/]

(Notice of Appeal, dated October 1990, at 1).

In its appeal of the September 20, 1990, order, Texaco contended that MMS had no authority to require it to conduct what Texaco characterized as a "self-audit," and that collection of royalties was barred by the statute

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1/ The lease, comprising 40 acres, is located in Carter County, Oklahoma. It is committed to the Hewitt Unit and receives 1.97688 percent of the unit production.

2/ Neither a copy of the Sept. 30, 1988, order nor a copy of the Dec. 29, 1988, agreement are part of the case record forwarded to the Board by MMS.

of limitations found at 28 U.S.C. § 2415 (1988). The Acting Deputy Commissioner denied the appeal, ruling that MMS was well within its authority in requiring Texaco to perform what he termed a "restructured accounting." That task required Texaco to investigate and locate accounting transactions meeting specifically identified conditions, and to make certain directed corrections of a class of mistakes or errors already identified by MMS' audit. The Acting Deputy Commissioner pointed out that since Texaco did not dispute the existence of errors disclosed by MMS' audit, it was reasonable for MMS to infer that errors may have occurred in months other than the test months of its audit.

Citing various authorities, the Acting Deputy Commissioner also held that the 6-year statute of limitations, 28 U.S.C. § 2415 (1988), is not applicable to an administrative proceeding, and that if Congress had intended to limit review of royalty related documents for Federal oil and gas leases, it would not have conferred upon the Secretary the authority under section 103(b) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. § 1713(b) (1988), to require lessees to maintain records for periods in excess of 6 years where a Federal audit or investigation is under way.

In its appeal to this Board, Texaco did not specifically attack anything other than the Acting Deputy Commissioner's conclusions, and it did not provide any new arguments. Instead, it adopted the reasons it set forth in its appeal below.

The two issues presented in this case have both been previously addressed by this Board and by the courts.

[1] Section 101(c)(1) of FOGRMA requires the Secretary of the Interior and his designated delegates to "audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas." 30 U.S.C. § 1711(c)(1) (1988); see 30 CFR 217.50. It is clear that Congress, in enacting FOGRMA, sought to avoid a royalty accounting and collection system operating entirely on the honor principle, with no verification of production and sales data, since this sort of arrangement had led to underreporting of production and sales in the past. See H.R. Rep. No. 859, 97th Cong., 2d Sess. 15, 16 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 4268-70. The statute required instead that the Secretary and his delegates were to audit and reconcile lease accounts. However, Congress was also aware that "auditing every account on an annual basis is clearly impractical." H.R. Rep. No. 859, 97th Cong., 2d Sess. 33 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 4287. With this practical consideration in mind, the Secretary was to audit and reconcile accounts only "to the extent practicable." 30 U.S.C. § 1711(c)(1) (1988).

In BHP Petroleum (Americas) Inc., 124 IBLA 185, 187 (1992), we held that FOGRMA does not restrain the Secretary from directing a royalty payor

to review royalty accounts in order to uncover underpayments traceable to identified defects in the payor's original calculation of royalties due. We also approved MMS' practice of sampling certain leases, or as in this case, certain production months for certain leases, leaving the payor the burden to uncover all other instances of systemic deficiency. Id. at 188; see also Amoco Production Co., 123 IBLA 278, 281-84 (1992). The evidence uncovered by MMS in its preliminary review in this case disclosed irregularities that were capable of repetition. See Amoco Production Co., 123 IBLA at 294.

In Phillips Petroleum Co. v. Lujan, 963 F.2d 1380 (10th Cir. 1992), the court rejected Phillips' argument that MMS had required it to perform an impermissible "self audit" in contravention of FOGRMA. The court approved MMS' procedure of requiring lessees to correct repeated royalty underpayments caused by systemic deficiencies. Id. at 1386.

[2] The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1988), provides that "every action for money damages brought by the United States * * * which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues." We have long ruled that statutes establishing time limitations for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. Chevron U.S.A., Inc., 129 IBLA 151, 154 (1994), and cases cited therein. We have specifically declined to rule that MMS demands for additional royalty are barred by that provision. Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992); Marathon Oil Co., 119 IBLA 345, 352 (1991).

In addition, in a September 7, 1994, order granting rehearing of its opinion in Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994), the court affirmed the District Court's grant of summary judgment to the defendants in two of four consolidated cases challenging MMS' orders to recalulate royalties and pay additional royalties, concluding that the statute of limitations did not bar the agency's action. 3/ The court stated:

> The term "action for money damages" refers to a suit in court seeking compensatory damages. The plain meaning of the statute

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3/ In its decision, the court had reversed the District Court's grant of summary judgment in all four cases because the "Procedure Paper on Natural Gas Liquid Products [NGLP's] Valuation," issued on Dec. 14, 1984, and revised on Feb. 25, 1985, which MMS had directed be used in the recalculation of royalties, was a substantive rule which should have been published in the Federal Register and offered for notice and comment. On rehearing, the court recognized that two of the four cases did not involve the Procedure Paper.

> bars "every action for money damage" unless "the complaint is filed within six years." (Emphasis added.) Thus, actions for money damages are commenced by filing a complaint. Actions that do not involve the filing of a complaint are not "action[s] for money damages." Since the government has filed no complaint, the agency action is not a[n] action for money damages." Thus, § 2415 is no bar.

(Order at 3-4).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

John H. Kelly
Administrative Judge